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Appeal from Circuit Court, Chesterfield County.

Bill by J. B. Queensbury and others against Hilda Vial, née Hilda Rudolph, and her husband. From decree dismissing the bill, plaintiffs appeal. Affirmed.

O'Flaherty, Fulton & Byrd, of Richmond, for appellants.

Haskins Hobson, of Powhatan, for appellees.

PENNSYLVANIA R. CO. *v.* JENKINS.

June 13, 1918.

[96 S. E. 170.]

1. Appeal and Error (§ 1097 (1)*)—Former Appeal as Law of the Case.—On second appeal of a case, if the facts are substantially similar, nothing decided on the first appeal can be re-examined.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 651.]

2. Carriers (§ 336*)—Injury to Passenger—Contributory Negligence.—An employee of a locomotive works, accompanying dead engines in a freight train to destination, who without looking alighted from his engine to examine it immediately next to one of the main line passenger tracks of the company, upon which from his knowledge and experience of 20 years as locomotive engineer he must have known that trains were likely to pass at any moment, and as to which danger he had been cautioned twice upon the day of the accident, cannot recover, whether he was struck by an approaching passenger train just as he stepped from his engine, or just before he straightened up after having suddenly stepped from his engine.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 707.]

3. Trial (§ 252 (8)*)—Instruction—Applicability to Evidence.—Where it was manifested that there was no opportunity to save plaintiff from his own negligent act, instructing to the effect that the doctrine of discovered peril or of last clear chance might be applied was error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

Error to Hustings Court of Richmond.

Action by C. W. Jenkins against the Pennsylvania Railroad Company. Verdict and judgment for plaintiff, and defendant brings error. Judgment reversed, and case remanded.

Eppa Hunton, Jr., and *Thos. B. Gay*, both of Richmond, for plaintiff in error.

O'Flaherty & O'Flaherty, of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.